

THE INCOME TAX APPELLATE TRIBUNAL  
“C” Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No.1010/Mum/2020 (Assessment Year : 2016-17)

I.T.A. No.1011/Mum/2020 (Assessment Year : 2013-14)

DCIT,Circle-2(1)(1) Room NO.561, 5 <sup>th</sup> Floor, Aaykar Bhawan, M.K.Road Mumbai-400 020	Vs.	Cable Corporation of India Ltd. 4 <sup>th</sup> Floor, Laxmi Building 6, Shoorji Vallabhdas Marg Ballard Estate Mumbai-400 002  PAN : AAACC2936J
(Appellant)		(Respondent)

Assessee by	Shri Nishith Khatri
Department by	Ms. Shreekala Pardeshi
Date of Hearing	01/09/2021
Date of Pronouncement	02/09/2021

O R D E R

Per Shamim Yahya (AM) :-

These are Revenue's appeals directed against respective orders of learned CIT(A) pertaining to assessment years 2013-14 and 2016-17.

2. Since the issues are common and connected and the appeals were heard together, these have been consolidated and disposed off together for the sake of convenience.

3. Grounds of appeal read as under :-

We are referring to the grounds in AY 2013-14.

1. "On the facts and in the circumstances of the case and in law, the ld. CIT'(A) erred in allowing relief to the assessee relying on the decision of the Hon'ble Gujarat High Court in cases of CIT Vs. Corrtch Energy (P) Ltd. Vs. (2015) 372 ITR 97 (Gujarat) & Cheminvest Ltd. Vs. CIT (2015) 61 Taxmann.com 118 (Delhi), without

appreciating the fact that as per CBDT Circular No, 5 of 2014. it was directed that disallowance u/s. 14A should be made even if the assessee did not earn any exempt income during the year."

2. "On the facts and in the circumstances of the case and in law. the Ld. CIT(A) erred in allowing relief to the assessee without appreciating the fact that late payments of employee's contribution to EPF is not an allowable deduction u/s. 36 (1)(va) r.w.s. 2(24)(x)."

Apropos ground No.1

4. On this issue Ld. AO had mentioned that the Appellant had not earned any dividend income on the investment estimated at Rs.57,35,00,000/- in shares of M/s CCI Projects Pvt.Ltd. According to the A.O, if Appellant had earned dividend income on it, then it must have claimed exemption u/s 10(34) of the Act. In view of these facts, the Ld. AO invoked the provision of Sec 14A r.w.Rule 8D and worked out a disallowance of Rs.6,29,08,698/- under Rule 8D(3)(ii) and Rs.28,67,500/- under Rule 8D(2)(iii).

5. Upon assessee's appeal Ld.CIT(A) accepted the assessee's submissions that since no exempt income has been earned on disallowance u/s. 14A is permissible. In this regard, he referred to the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs CIT 378 ITR 33 and Hon'ble Gujarat High Court in CIT vs. Corrttech Energy P.Ltd. 372 ITR 97.

6. Against the above order, the revenue has filed appeal before ITAT. Upon heard both the counsels and perused the records, we note that the issue is covered in favour of the assessee by the decision referred above. No disallowance u/s. 14A is permissible when the assessee has not earned exempt income. This proposition is further supported by the decision of Hon'ble Bombay High Court in the case of Delite Enterprises (in ITA No. 110 of 2009) and Hon'ble Apex Court decision in Maxopp Investment Ltd. 402 ITR 640 (SC) wherein the proposition that disallowance cannot exceed the exempt income has been upheld. As an obvious corollary, when there is no exempt income

there cannot be disallowance u/s 14A. Hence, we do not find any infirmity in the order of Ld.CIT(A). Accordingly, we uphold the order of Ld.CIT(A).

7. Apropos Ground No.2

On this issue AO made disallowances of a sum of Rs.49,37,006/- being contribution made towards the Employees Provident Fund on the ground that it has paid beyond the due dates prescribed u/s. 24(x) r.w.s. 36(1)(va) of the Act.

8. On assessee's appeal, Ld.CIT(A) noted that the appellant submitted that during the previous year relevant to the assessment year under appeal, the Appellant had contributed Rs.69,38,071/- towards Employees Provident Fund. Out of the said amount, a sum of Rs.30,20,066/- was deposited after the due date prescribed by the respective funds and the said amount was deposited before the due date of filing of return of income under section 139(1) of the Act.

9. Ld.CIT(A) accepted the assessee's contentions that since the payment was made by the assessee before the due date filing of the return, no disallowance can be made. The Ld.CIT(A) referred to Hon'ble Bombay High Court decision in the case of CIT v. Ghatge Patil Transports Ltd. 368 ITR 749 wherein Hon'ble High Court has held that Section 43B is applicable to both employers and employees contribution. Hence, the Tribunal was right in holding that payments thereof are subject to benefits of section 43B. Ld.CIT(A) in this regard also referred to the earlier Ld.CIT(A)'s order in assessee's own case for AY 2014-15 where the issue was similarly allowed. Ld.CIT(A) further referred to several Tribunal decisions in this regard. He concluded as under:-

During the year under consideration, there is neither any factual change, nor any legal change, the Appellant has deposited the contribution made towards the Employees Provident Fund before the due date of filing of return,

therefore, respectively following judgments of Hon'ble Tribunals and Hon'ble High Courts as discussed in the foregoing paras, appeal of the assessee is allowed on this ground.

10. Against the above order, revenue is in appeal before us.

11. We have heard both the parties and perused the record. We find that the issue is squarely covered in favour of the assessee by the decision referred hereinabove. It is not disputed that the impugned amounts were paid/deposited before the due date of filing of the return. Ld. DR could not controvert that the issues are could not covered in favour of the assessee. Accordingly, we uphold the order of Ld.CIT(A).

12. In the result, this appeal is dismissed.

ITA NO.1010/Mum/2020 for AY 2016-17

13. The grounds of appeal and the orders of the authorities below are similar to the one adjudicated by us in AY 2013-14 dealt with above. No change in facts and circumstances has been pointed out by revenue. Hence, our above adjudication applies mutatis mutandis and for this year also. Accordingly, this appeal by the revenue also stand dismissed.

14. In the result, both appeals by the revenue are stands dismissed

Pronounced in the open court on 02 /09/2021

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 02/09/2021  
Thirumalesh, Sr.PS  
Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai